

DESIGNATION OF ENERGY CORRIDORS UNDER THE ENERGY POLICY ACT OF 2005

The Energy Policy Act of 2005 mandates two separate processes for designation of energy corridors (for pipelines and power lines) on public lands. Under the Bush administration, corridors were designated without sufficient effort to avoid environmental damage or support renewable energy, while undermining and often ignoring input from the public and affected state and local governments. The Wilderness Society supports the designation of energy corridors and their ability to guide us to a cleaner and safer energy grid. However, there are serious flaws in how and where the Bush administration designated these energy corridors, which must be remedied before these lands are industrialized for large-scale development.

Additional information on both processes, including impacts on public lands and comments submitted, area available at: <http://wilderness.org/campaigns/blm-action-center/energy-corridors>

1. West-wide Energy Corridors - Section 368 of the Energy Policy Act requires a coordinated effort by the Secretaries of Agriculture, Commerce, Defense, Energy and Interior, in consultation with the Federal Energy Regulatory Commission (FERC), other governments, industries, and other interested parties, to **designate corridors for oil, gas and hydrogen pipelines and electricity transmission and distribution facilities on federal lands**. The agencies are required to complete any environmental reviews and incorporate the corridors into existing land use plans as part of the designation process. Section 368 also requires that the agencies establish procedures to ensure that additional corridors are designated promptly and to expedite applications for construction of pipelines and facilities within the designated corridors.

Approach: A programmatic environmental impact statement (**PEIS**) was completed in January 2009 for the 11 Western States¹ to designate the corridors; the remaining states will be addressed next. The agencies also have continuing duties to identify and designate additional energy corridors as they deem necessary. The PEIS specifies the centerline, width and uses for designated corridors, and also serves to amend the affected federal land use plans. Most of the corridors are 3500 feet (or approximately 2/3 mile) wide, but some corridors are narrower (95 feet) or wider (up to 5 miles). While most corridors would permit both pipelines and power lines, certain corridors are limited to only electric transmission or to underground lines. The corridor locations under consideration were created from an original “wish list” proposed by industry and bisect many important and sensitive places, including places that are designated conservation areas and would be expected to be protected from such intrusions.

Status: In a rush by the Bush administration to sign off on the West-wide Energy Corridors PEIS in its waning days, the interested public was not given the right to protest the Final PEIS as is directed in the BLM’s land use planning regulations. The PEIS designates approximately 6000 miles of corridors encompassing close to 3 million acres of public lands. During the time the public was provided to comment on proposed designations, conservation groups’ main recommendations were:

1. **Help create a smart grid:** Ensure corridors are needed (or whether demand could be met through energy efficiency or upgrades) and link energy corridors to renewable energy resource areas.
2. **Identify and avoid important and sensitive areas:** Wilderness, National Parks, National Wildlife Refuges, National Monuments, threatened, endangered and sensitive species habitat, and other special or vulnerable places were not meant for this type of large-scale development.

¹ Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

3. **Connect the dots:** Analyze the likely routes of corridors on other lands to better understand risks of damage to natural resources and communities, as well as identify best locations.
4. **Mitigate foreseeable impacts:** Where site-specific projects go forward inside energy corridors, agencies should be bound by mandatory mitigation measures that will apply to each application.

In response, the agencies did improve the PEIS by including mandatory mitigation measures and avoiding certain designated conservation areas. Unfortunately, even the avoided areas are not formally excluded from future designation or development and some are still actually directly crossed by corridors. The PEIS also failed to incorporate information provided to the agencies concerning energy efficiency measures or renewable energy resource areas that would create a smart energy network for America. Members of Congress, military officials, private property owners and state agencies have also identified concerns with the potential for large-scale designation of corridors. Official PEIS website: <http://corridoreis.anl.gov/index.cfm> . All comments, including maps submitted by industry, can be viewed at: <http://corridoreis.anl.gov/involve/index.cfm>.

2. National Interest Electric Transmission Corridors (NIETCs) - Section 1221 of the Energy Policy Act requires the Secretary of Energy to conduct a study of electric transmission congestion and designate as “national interest electric transmission corridors” any **geographic area experiencing electric energy transmission capacity constraints or congestion** that adversely affects consumers. Once designated, these corridors are subject to an abridged process for approval of construction permits issued by FERC, use of eminent domain to obtain rights-of-way across private lands, and coordinated environmental reviews led by Department of Energy (DOE).

Considerations for designation may include whether:

- Economic vitality and development may be constrained by lack of adequate or reasonably priced electricity;
- Economic growth jeopardized by reliance on limited energy sources and diversification of supply is warranted;
- Energy independence of U.S. served by designation;
- Designation is in interest of national energy policy; and
- Designation would enhance national defense and homeland security.

Approach: Study, report and designations to be completed by Secretary of Energy. No public input until after issuance of preliminary study, then comments are solicited on both the study and proposed designations. Further opportunities for public comment will be presented at FERC hearings on construction permits. **Unlike the approach for the West-wide Energy Corridors, the agencies did not prepare an environmental impact statement, further preventing meaningful public comment on the designation of the NIETCs.**

For designated corridors, FERC can issue **permits for construction/modification after notice and opportunity for hearing**, if FERC finds:

- State does not have authority, applicant does not have to qualify because applicant does not serve end-use customers in the State, or that a State commission with authority to issue permits has withheld approval for more than 1 year;
- Corridor is to be used for transmission of electric energy in interstate commerce;
- Consistent with public interest;
- Will significantly reduce transmission congestion;
- Consistent with sound national energy policy and will enhance energy independence; **and**
- Will maximize transmission capabilities of existing towers/structures.

Rights-of-way can be obtained through eminent domain if property is not State or federal and permit holder cannot obtain otherwise:

- Applicant brings action in district court to exercise eminent domain
- Considered a government “taking” of property so owner will receive just compensation

Coordination of approvals/authorizations among federal agencies:

- DOE is lead agency to produce single environmental document and streamline process
- Complete all environmental reviews within 1 year
- If any federal agency involved denies authorization or fails to act within 1 year or other timelines set by DOE on issuing authorization, then applicant or State in which facility would be located **can file appeal** with the President, who can then issue the permits

Status: DOE issued a Notice of Inquiry seeking comments on the suitability of geographic areas for designation as national interest electric transmission corridors on January 27, 2006. The National Electric Transmission Congestion Study was issued for comment on August 8, 2006. Conservation groups submitted comments to urge the DOE to exercise caution in designating national interest electric transmission corridors before thorough consideration of potential environmental consequences are considered, to narrowly define the terms justifying designation and to protect sensitive areas from harm. All comments submitted, as well as other documents related to the congestion study and ongoing process for designation are available on-line at: <http://nietc.anl.gov/>. Additional studies and reports are to be completed every three years. No specific limits on when designations of corridors can occur; DOE takes the position that it can designate additional NIETCs as it determines necessary.

On June 15, 2006, FERC issued proposed regulations to coordinate federal authorizations and related environmental reviews of applications to construct transmission facilities in national interest electric transmission corridors. Conservation groups submitted comments pointing out that the regulations must ensure that applicants are justified in submitting proposals to FERC (and not just short-cutting or short-circuiting other regulatory agencies) and also suggesting changes to ensure more thorough consideration of potential environmental risks and less damaging alternatives. Comments received by FERC, as well as the rules and related documents are available on-line at: <http://www.ferc.gov/industries/electric/indus-act/siting.asp>. FERC did not make substantive changes and has asserted its authority to begin processing permit applications.

Effective October 8, 2007, DOE designated two NIETCs in areas identified as “Critical Congestion Areas” in its August 2006 study:

1. **Mid-Atlantic Area NIETC** (encompassing huge portions of Ohio, New Jersey, New York, Pennsylvania, Maryland, West Virginia and Virginia – map available on-line at: http://nietc.anl.gov/documents/docs/NIETC_MidAtlantic_Area_Corridor_Map.pdf)
2. **Southwest Area NIETC** (covering a substantial area in Arizona and Southern California – map available at: http://nietc.anl.gov/documents/docs/NIETC_Southwest_Area_Corridor_Map.pdf - although the original proposal included Clark County, Nevada, as well).

The corridors are designated as broad geographic regions, within which projects can be proposed and approved and are in effect for 12 years, although DOE may also propose new areas for designation at any time. DOE describes the designations as a “source-and-sink” approach – linking the sources of energy production to the “sinks” where energy supply is congested or constrained. DOE maintains that this approach means that there is no need to carve out legally protected or other sensitive areas or engage in any analysis of environmental impacts as part of the designation. DOE has set out its justifications in detail in the Frequently Asked Questions produced with the designations proposed in May 2007 (available on-line at: http://nietc.anl.gov/documents/docs/FAQ_Nat_Corridor_Designation.pdf) and those that accompanied the designations in October 2007 (available on-line at: http://nietc.anl.gov/documents/docs/FAQs_re_National_Corridors_10_02_07.pdf).

The NIETC designations are being challenged in a number of legal actions. A number of groups and state agencies filed Applications for Rehearing, which the DOE denied on March 6, 2008, leading to additional actions being filed in the U.S. Court of Appeals. A consolidated action involving conservation groups and every state within the designated NIETCs is now pending in the U.S. Court of Appeals for the 9th Circuit. A number of conservation groups and the State of Pennsylvania also filed lawsuits in federal district court in Pennsylvania and California.